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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 JAMES E. HERMANSON,

9 *Petitioner,*

10 vs.

11 ISIDRO BACA, *et al.*,

12 *Respondents.*
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3:17-cv-00721-HDM-VPC

ORDER

15 Following upon the entry of appearance (ECF No. 11) by the Federal Public Defender,
16 IT IS ORDERED that the Federal Public Defender, through Jonathan M. Kirshbaum,
17 Esq., is appointed as counsel for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel
18 will represent petitioner in all federal proceedings related to this matter, including any appeals
19 or *certiorari* proceedings, unless allowed to withdraw.

20 IT FURTHER IS ORDERED that petitioner shall have until up to and including **one**
21 **hundred twenty (120) days** from entry of this order within which to file an amended petition
22 and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof
23 signifies or will signify any implied finding as to the expiration of the federal limitation period
24 and/or of a basis for tolling during the time period established. Petitioner at all times remains
25 responsible for calculating the running of the federal limitation period and timely asserting
26 claims, without regard to any deadlines established or extensions granted herein. That is, by
27 setting a deadline to amend the petition and/or by granting any extension thereof, the Court
28 makes no finding or representation that the petition, any amendments thereto, and/or any

1 claims contained therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729
2 F.3d 1225, 1235 (9th Cir. 2013).

3 IT FURTHER IS ORDERED that respondents shall file a response to the amended
4 petition, including potentially by motion to dismiss, within **sixty (60) days** of service of an
5 amended petition and that petitioner may file a reply thereto within **thirty (30) days** of service
6 of the answer. The response and reply time to any motion filed by either party, including a
7 motion filed in lieu of a pleading, shall be governed instead by Local Rule LR 7-2(b).

8 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to
9 the counseled amended petition shall be raised together in a single consolidated motion to
10 dismiss. In other words, the Court does not wish to address any procedural defenses raised
11 herein either in *seriatum* fashion in multiple successive motions to dismiss or embedded in
12 the answer. Procedural defenses omitted from such motion to dismiss will be subject to
13 potential waiver. Respondents shall not file a response in this case that consolidates their
14 procedural defenses, if any, with their response on the merits, except pursuant to 28 U.S.C.
15 § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek
16 dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single
17 motion to dismiss not in the answer; and (b) they shall specifically direct their argument to the
18 standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614,
19 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, shall be
20 included with the merits in an answer. All procedural defenses, including exhaustion, instead
21 must be raised by motion to dismiss.

22 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall
23 specifically cite to and address the applicable state court written decision and state court
24 record materials, if any, regarding each claim within the response as to that claim.

25 IT FURTHER IS ORDERED that any state court record and related exhibits filed herein
26 by either petitioner or respondents shall be filed with a separate index of exhibits identifying
27 the exhibits by number. The CM/ECF attachments that are filed further shall be identified by
28 the number or numbers of the exhibits in the attachment. If the exhibits filed will span more

1 than one ECF Number in the record, the first document under each successive ECF Number
2 shall be either another copy of the index, a volume cover page, or some other document
3 serving as a filler, so that each exhibit under the ECF Number thereafter will be listed under
4 an attachment number (*i.e.*, Attachment 1, 2, etc.).

5 IT FURTHER IS ORDERED that the hard copy of any exhibits filed by either counsel
6 shall be delivered – for this case – to the Reno Clerk's Office.

7 DATED: January 25, 2018.
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12 HOWARD D. MCKIBBEN
13 United States District Judge
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